

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 14

WHITE'S GREENHOUSES, INC.

Employer

and

Case 14-RC-12409

UNITED STEELWORKERS OF AMERICA,
AFL-CIO-CLC

Petitioner

REGIONAL DIRECTOR'S DECISION AND ORDER

The Employer, White's Greenhouses, Inc., grows and sells various plants at two facilities located in Godfrey and Alton, Illinois. The Petitioner, United Steelworkers of America, AFL-CIO-CLC, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act. The Petitioner seeks to represent a unit of all full-time and regular part-time labor and retail employees employed at the Godfrey and Alton facilities. A hearing officer of the Board held a hearing, and the parties filed briefs with me, which I have carefully considered.

The parties disagree on two issues: (1) whether employees in the petitioned-for unit are agricultural laborers excluded from the statutory definition of employee under Section 2(3) of the Act; and (2) whether one lead person is a supervisor within the meaning of Section 2(11) of the Act. The Employer contends that the employees in the unit sought by the Petitioner are agricultural laborers under Section 2(3) of the Act and are, therefore, not subject to the Act's provisions. The Petitioner disagrees. I have considered the evidence and the arguments presented by the parties on this issue, and I find that the individuals whom Petitioner seeks to

represent are agricultural laborers and not “employees” within the meaning of the Act. As the Petitioner does not seek to represent any statutory employees, I must dismiss the petition for failing to raise a question concerning representation. Because of the decision to dismiss the petition, I need not resolve the issue as to the supervisory status of the lead person.

OVERVIEW OF OPERATIONS

The Employer grows plants for sale from two locations in Illinois. The Godfrey operations are larger, with 4 acres of greenhouse growing space as well as a 5-acre outdoor growing area. The Godfrey location has 20 employees in the unit sought. Alton employs 3 employees in the proposed unit and has ¼ acre of growing space outside and 3000 square feet of greenhouse growing space. By manipulating the climate and lighting through heaters and high intensity light fixtures, the Employer is able to grow plants indoors throughout the year.

The Employer sells its plants to landscapers, garden centers, large retail chain stores, and the general public. The sale of plants that the Employer has grown accounts for 94 percent of its total sales. The Employer also sells a small amount of products that it does not produce. Such items include potting soil, fertilizer, pots, birdbaths, foliage, artificial Christmas trees, and other decorative items. Sales of such items account for 6 percent of the Employer’s total sales.

While the majority of plants are grown from seeds, some are propagated from cuttings taken from the roots of mature plants. In either case, the growing plants must be transplanted from their original containers or trays at least once during the growing cycle. During the growth cycle, some plants are taken outside during a hardening process. These plants are not planted in the ground but are set upon the ground in trays or carts and grown for a time outside in order to make a tougher, more resistant plant for the customer.

The Employer grows flowers as well as vegetables in its greenhouses. The type of flower grown at a particular time of year reflects consumer demands. For example, the Employer begins growing poinsettias in June to meet demands during the holiday season. After the conclusion of the holiday season, the Employer prepares bulbs and seedlings for spring

flowers. During the spring season, the Employer utilizes temporary workers for an average of less than 90 days in order to meet production needs. At the Godfrey location alone, the Employer produces approximately 100,000 trays of plants for the spring season. During the summer months, the Employer grows tens of thousands of hardy mums. In addition to these flowers, the Employer grows tomatoes, cabbage, cucumbers, cantaloupes, watermelons, and zucchini squash.

Regardless of the type of plant grown, the growing process requires careful monitoring of climatic conditions and constant attention to the plants in order to maintain the proper levels of watering, fertilizing, and spraying for insects. To that end, the Employer operates 7 days a week. The majority of watering is done by hand-held hoses, but the Employer also has a watering system capable of watering 1000 to 2000 plants at a time. The greenhouse operations involve the use of various machines, including tractors, heating and cooling equipment (boilers, furnaces, horizontal airflow fans), and soil mixers.

The Employer's laborers, whom it describes as "greenhouse workers," perform all tasks associated with each phase of the growing process. There is no rigid separation of duties among particular greenhouse workers but a fluid interchange of duties. All greenhouse workers mix soil, pot plants, take soil samples, propagate cuttings, and sow seeds. They also inspect and spray for bugs, water and fertilize plants, transplant seedlings and cuttings, and transport plants outdoors for hardening. Greenhouse workers prepare orders for shipping and deliver orders to the Employer's customers. The greenhouse workers may also engage in some retail activities, but none of the Employer's employees are engaged exclusively in retail sales or other retail activities. The Employer utilizes five lead persons who oversee the work of the less-skilled greenhouse workers. Both lead persons and greenhouse workers may perform necessary maintenance on machines and equipment such as the greenhouse heating units, horizontal airflow fans, tractors, and delivery trucks.

THE AGRICULTURAL LABORER EXEMPTION

Section 2(3) of the Act specifically excludes agricultural laborers from the definition of employee. To determine whether an employee is exempt as an agricultural laborer within the meaning of Section 2(3), Congress has directed the Board to follow the definition set forth in Section 3(f) of the Fair Labor Standards Act:

“agriculture” includes farming in all its branches and among other things includes ... the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities ... and any practices ... performed by a farmer or on a farm including preparation for market, delivery to storage or to market or to carriers for transportation to market.¹

Under this definition, “agriculture” has both a primary and a secondary meaning. The primary meaning refers to actual farming or horticultural operations such as cultivation, tilling, and growing of commodities. The secondary meaning includes any practices performed by a farmer or on a farm in conjunction with farming operations. *Camsco Produce Co., Inc.*, 297 NLRB 905, 906 (1990) Pursuant to this definition, the Board has repeatedly held that employees engaged in the planting, cultivating, and harvesting of plants and flowers at greenhouses are agricultural laborers who are not covered by the Act. *Stark Bros. Nurseries and Orchards Co.*, 40 NLRB 1243 (1942); *Seattle Wholesale Florists Ass’n*, 92 NLRB 1186 (1951); *William H. Elliot Sons & Co.*, 78 NLRB 1078 (1948); *Michigan Mushroom Co.*, 90 NLRB 774 (1950); *Hershey Estates*, 112 NLRB 1300 (1955); *Light’s Tree Co.*, 194 NLRB 229 (1971)

Here, the Employer’s greenhouse workers engage in both primary and secondary horticultural activities. As for primary functions, the greenhouse workers sow seeds, propagate cuttings, cultivate, water, transplant, space, spray, and engage in other activities necessary to insure the proper growth and development of the plants. The greenhouse workers may also engage in secondary duties, including preparing the plants for sale, performing maintenance work on machines and equipment, selling plants on the Employer’s premises, and delivering

¹ 29 U.S.C. 203 (f) (1994); See e.g., *Camsco Produce Co., Inc.*, 297 NLRB 905, 906 (1990)

plants to customers. The time spent by greenhouse workers in connection with the sale and delivery of the Employer's own products clearly falls within the scope of exempt secondary activities. *Rod McLellan Co.*, 172 NLRB 1458, 1459 (1968) The record reveals that greenhouse workers may engage in a minimal amount of retail sales activity with respect to non-Employer produced items such as pots, birdbaths, decorations, or potting soil. With respect to the sale of non-Employer generated products, the Board considers such activities nonagricultural. *Id.* However, as discussed below, this factor does not affect the greenhouse workers' status as agricultural workers because the time spent on such activities is insubstantial. *Hershey Estates*, *supra* at 1301 (greenhouse employees who spent a small portion of time selling the products of other greenhouses did not lose exemption).

The Board has set forth a "substantiality" requirement for assessing the significance of the proportion of nonexempt work performed by employees who spend at least part of their time engaged in primary agricultural duties. The proper inquiry focuses upon whether the amount of nonagricultural work is substantial. *Produce Magic, Inc.*, 311 NLRB 1277 (1993) While the Petitioner urges that I apply the regularity test set forth in *Camsco Produce Co.*, *supra*, that test is not applicable in this case. In *Camsco*, the Board applied a regularity test to determine the significance of nonexempt work handled by employees engaged in *secondary* agricultural duties. In so holding, however, the Board specifically noted that a different substantiality rule governs when the employees in question, like the greenhouse workers here, are engaged in agricultural activities in the primary sense. If an employee is regularly engaged in primary agricultural activities, a small amount of nonexempt work is "inadequate to tip the scales" in favor of asserting jurisdiction. *Camsco Produce Co.*, *supra* at 908, fn. 18., *citing NLRB v. Kelly Bros. Nurseries, Inc.*, 341 F.2d 433, 439 (1965); *Light's Tree Co.*, 194 NLRB at 231 (not asserting jurisdiction where 90 percent of total work time spent in agricultural work). See also, *Valley Harvest Distributing*, 294 NLRB 1166 fn. 3 (1989) (cutter-trimmers found to be exempt agricultural laborers since they spent the vast majority of their time in primary agriculture and

any nonexempt work they performed was not frequent or substantial enough to cause them to lose the exemption); *Aquacultural Research Corp.*, 215 NLRB 1 (1974) (asserting jurisdiction where agricultural and nonagricultural work intermixed and nonagricultural work was substantial); *Bud of California*, 311 NLRB 1352, 1354 (1993) (regularity test does not apply where the employees are engaged in primary agricultural work).

Here, the record establishes that the sale of non-Employer produced items comprises 6 percent of its total sales. The record further establishes that the manager of the Alton location works solely in retail sales.² A lead person who has worked for the Employer for nearly 8 years testified that he had only worked in retail sales “a couple of times” in the past. He further testified that his involvement in retail sales was rare--“not at all” often. It is clear that greenhouse workers spend the vast majority of their time on primary and secondary agricultural duties. Any involvement with respect to nonexempt work is necessarily de minimus, as such sales constitute only 6 percent of the Employer’s total revenue. Thus, the greenhouse workers’ nonagricultural duties represent too small a percentage of their annual total work time to justify an election among them to select a bargaining representative who will represent them insofar as they engage in such nonagricultural work. *Light’s Tree Co.*, supra

CONCLUSIONS AND FINDINGS

Based on the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer’s rulings made at the hearing are free from prejudicial error and are affirmed;

² The parties stipulated that this manager is a supervisor within the meaning of Section 2(11) of the Act.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes and policies of the Act to assert jurisdiction in this case;³
3. The Petitioner claims to represent certain employees of the Employer; and
4. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act for the reasons stated above.

ORDER

IT IS HEREBY ORDERED that the petition filed herein is dismissed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by December 19, 2002.

Dated December 5, 2002

at St. Louis, Missouri

Ralph R. Tremain, Regional Director
National Labor Relations Board
Region 14
1222 Spruce Street, Room 8.302
St. Louis, MO 63103-2829

220-2484-1250-1200

³ The Employer, White's Greenhouses, Inc., an Illinois corporation, with its principal offices located at 3804 Stanka Lane, Godfrey, Illinois, and a facility located at 26 East Delmar in Alton, Illinois, is engaged in the growth of flowers and vegetable plants in greenhouses and in the fields. During the past 12 months, which period is representative of the Employer's operations, the Employer derived gross revenues in excess of \$1,000,000 from the operations of its facility, and purchased and received goods valued in excess of \$50,000, which goods were shipped directly to the Employer's Godfrey, Illinois facility from points outside the State of Illinois.